HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

WRIT APPEAL No.1295 OF 2006

Between:

Puuta Venkatesam Setty
. . .Appellant

AND

The State of Andhra Pradesh
and others
. . .Respondents

:: JUDGMENT ::

Counsel for the Appellant : Shri V.R.Reddy Kovvuri

8th December, 2006

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PER G.S.SINGHVI, CJ

This appeal is directed against order dated 29.11.2006 passed by the learned Single Judge, whereby he refused to quash show cause notice dated 31.10.2006 issued by Mandal Revenue Officer, C.K. Dinne Mandal under Section 7 of the Andhra Pradesh Land Encroachment Act, 1905 (for short 'the Act').

The appellant claims to have acquired right over land measuring Ac.1.22 cents in Survey No. 267/1, Ac.0.78 cents in Survey No. 268/1, Ac.1.79 cents in Survey No.268/2 and Ac.1.59 cents in Survey No.268/3A of Thadigotla Village, Thadigotla Gram Panchayat, Chinatakommadinne Mandal, Kadapa District through inheritance from his father. His father is said to have purchased Ac.12.09 cents of land vide registered sale deed dated 27.07.1944 from one Pragadithota Gnanaiah. Out of that land, Ac.6.18 cents were acquired by District Collector, Kadapa and compensation was paid to the appellant and his brother. In 1984, the District Collector initiated proceedings under the Land Acquisition Act, 1894 (for short, 'the 1894 Act') for acquisition of Ac.5.38 cents of land. Those proceedings were quashed by the High Court in Writ Petition No.14436 of 1984 filed by the appellant and his brother. In the year 2002, the Mandal Revenue Officer conducted some enquiry at the instance of District Collector, Kadapa and recorded a finding that the land is a private land and the same cannot be allotted for house sites. In 2004-05, another enquiry is said to have been conducted by the Mandal Revenue Officer at the instance of the Revenue Divisional Officer. He again reiterated that the land was a private land. As a sequel to this, Revenue Divisional Officer issued

'No Objection Certificate' dated 05.07.2005 in favour of the appellant and his brother. Thereafter, the appellant and his brother executed General Power of Attorney in favour of four persons and got the same registered in the office of Sub-Registrar, Kadapa. On 30.10.2006, the Mandal Revenue Officer issued notice under Section 7 of the Act proposing to evict the appellant by asserting that the land in dispute is a Government land. The appellant challenged the notice in Writ Petition No.24808 of 2006, which was dismissed by the learned Single Judge on the ground that the same is not maintainable.

Learned counsel for the appellant made strenuous efforts to persuade us to overturn the order of the learned Single Judge and quash the notice impugned in the writ petition by arguing that the same is ultra vires the provisions of Section 7 of the Act. He further argued that the documents produced before the learned Single Judge were sufficient for recording a finding that the appellant is not in unauthorized occupation of the public land. He also referred to circular dated 09.10.2006 issued by District Collector, Kadapa and argued that even though notice dated 31.10.1996 does not make a mention of the said circular, source of the notice must be traced in the direction issued by the District Collector for getting the alleged encroachments from the Government land vacated. Learned counsel submitted that the instructions issued by the Collector do not have any legal sanctity and, therefore, the same are liable to be quashed.

We have considered the submissions of the learned counsel, but have not felt persuaded to agree with him. In our opinion, the learned Single Judge did not commit any error by refusing to entertain the appellant's challenge to the show cause notice. Law on this subject is well settled. No doubt, in exercise of power under Article 226 of the Constitution of India, the High Court can entertain a petition filed against the show cause notice, but this power can be exercised only if

it is found that the officer did not have the authority to issue such notice or that he has acted with ulterior motive or mala fide intention.

In the present case, the appellant has neither pleaded nor any material has been placed on the record of the writ petition and this appeal to show that respondent No.3 had acted with any malice animus against the appellant. Therefore, by applying the ratio of the judgments of the Supreme Court in **Central Coal Fields Limited v. State of Jharkhand**[1], **Hindustan Steel Works Construction Limited v. Hindustan Steel Works Construction Limited Employees Union**[2], **State of Uttar Pradesh v. Anil Kumar Ramesh Chandra Glass Works**[3], **A.P. Foods v. S.Samuel**[4], **Special Director v. Mohd. Ghulam**[5], **Standard Chartered Bank v. Directorate of Enforcement**[6] and a Division Bench judgment of this Court in **Special Officer, Urban Land Ceilings, Hyderabad v. M.Vijayalakshmi**[7], we hold that the writ petition was premature and the learned Single Judge rightly declined to entertain the same.

In the result, the appeal is dismissed.

As a sequel to dismissal of the main appeal, W.A.M.P.No.2735 of 2006 filed by the appellant for interim relief is also dismissed.

G.S.SINGHVI, CJ

C.V.NAGARJUNA REDDY, J

Date: 08.12.2006

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[1] (2005) 7 SCC 492

[2] (2005) 6 SCC 725

[3] (2005) 11 SCC 451

[4] (2006) 5 SCC 469

[5] (2004) 3 SCC 440

[6] (2006) 4 SCC 278

[7] 1998(6) ALT 627 (D.B.)